

BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
SUMMARY SHEET
June 8, 2006

[x] ACTION/DECISION
[] INFORMATION

I. TITLE: Proposed Amendment of R.61-83, Transportation of Radioactive Waste Into or Within South Carolina
Federally Mandated Regulations
Exempt from Legislative Review

II. SUBJECT: Request Initial Approval to Publish a Notice of Proposed Regulations in the State Register to Provide Opportunity for Public Comment and to Conduct a Staff Informational Forum

III. FACTS:

(1) The United States Nuclear Regulatory Commission (USNRC) promulgates amendments to 10 CFR 71 throughout each calendar year. Recent amendments include requirements for the Transportation Safety Standards. These rules were published in the Federal Register on January 26, 2004, at 69 FR 3698. Corrections to the Final Rule were published in the Federal Register on February 10, 2004 at 69 FR 6139 and September 29, 2004 at 69 FR 58038. The Final Rule and corrections are reflected in 10 CFR Part 71 as revised January 1, 2006.

(2) The State is required to adopt certain federal amendments within three years of the effective date of changes in USNRC regulations to maintain authorization by the USNRC for the State Radioactive Waste Management Program.

(3). The Department intends to amend R.61-83, Transportation of Radioactive Waste Into or Within South Carolina, to maintain conformity and assure compliance with the federal requirements for Transportation Safety standards as found in 10 CFR 71 and ensure compliance with federal standards as required by Section 274 of the Atomic Energy Act of 1954. This amendment will incorporate the transportation regulations by reference at section 61-83.1.2. This amendment will not be more stringent than the federal equivalent and will not require legislative review, nor is a preliminary assessment report or a fiscal impact statement required.

(4) The Department initiated the statutory process for amendment of R.61-83 by publication of a Notice of Drafting in the State Register on March 24, 2006. Notice of the Department's intent to promulgate this amendment was also published on the Department's Land and Waste Management Internet website, as well as in the Department's Regulation Development Update. No comments were received during the drafting comment period.

(5) The proposed amendment has been reviewed internally by appropriate staff.

(6) A copy of the proposed regulation was submitted to the Technical Advisory Radiation Control Council (TARCC).

(7) A Statement of Need and Reasonableness is submitted as Attachment A; a Table of Revisions is submitted as Attachment B; the Text of the Proposed Revision is submitted as Attachment C; a draft State Register Notice of Proposed Regulation is submitted as Attachment D; and the Notice of Drafting is submitted as Attachment E.

(8) Staff is requesting the Board grant initial approval to publish a Notice of Proposed Regulation in the State Register to provide opportunity for public comment and to conduct a staff informational forum. If

approved by the Board, a Notice of Proposed Regulations would be published in the State Register on June 23, 2006; a staff informational forum would be conducted on Monday, July 31, 2006, at 10:30 a.m. in room 1710 at the Stern Building at 8911 Farrow Road, Suite 106; and a public hearing before the Board would be scheduled for September 14, 2006. The amendments would be added to R.61-83 after Board approval and upon publication in the State Register.

IV. ANALYSIS: Adoption of the proposed amendments will maintain conformity with federal requirements and ensure compliance with federal standards. See Attachment A, Statement of Need and Reasonableness, for details.

V. RECOMMENDATION: Bureau staff recommends that the Board grant initial approval to publish a Notice of Proposed Regulations in the State Register, to provide opportunity for public comment, and to conduct a staff informational forum to receive and consider comments, and allow staff to proceed with a public hearing before the Board.

Submitted by:

Approved by:

Patrick T. Walker,
Bureau Chief
Bureau of Land and Waste Management

Robert W. King Jr. P.E.
Deputy Commissioner
Environmental Quality Control

Attachments: A. Statement of Need and Reasonableness
 B. Table of Revisions to R.61-83
 C. Text of Proposed Revision
 D. Draft State Register Notice of Proposed Regulation
 E. State Register Notice of Drafting

ATTACHMENT A
STATEMENT OF NEED AND REASONABLENESS
PROPOSED AMENDMENT OF R.61-83,
Transportation of Radioactive Waste Into or Within South Carolina
June 8, 2006

This Statement of Need and Reasonableness complies with S.C. Code Ann. Sections 1-23-115(c)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Proposed amendment of R.61-83, Transportation of Radioactive Waste Into or Within South Carolina

Purpose: The federal equivalent to R.61-83 is amended periodically. The State is required to adopt certain federal amendments within three years of the effective date of changes in United States Nuclear Regulatory Commission (USNRC) regulations to maintain authorization by the USNRC for the State Radioactive Waste Management Program.

Legal Authority: S.C. Code Ann. Sections 13-7-10 *et seq.*; (1976 & Supp. 2005); 13-7-40, Title 10 Part 71 of the Code of Federal Regulations.

Plan for Implementation: Upon final approval by the Board of Health and Environmental Control and publication in the State Register as a final regulation, amended regulations will be provided to the regulated community at cost through the Department's Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: Adoption of the proposed amendments of R.61-83 will enable compliance with recent federal amendments. See purpose above.

The Department intends to amend R.61-83 to maintain conformity with the federal requirements for Transportation Safety Standards as found in 10 CFR 71 and published in the Federal Register at 68 FR 3698 on January 26, 2004. Corrections to the Final Rule were published in the Federal Register on February 10, 2004 at 69 FR 6139 and September 29, 2004 at 69 FR 58038. The Final Rule and corrections are reflected in 10 CFR Part 71 as revised January 1, 2006. Adoption of these regulations will ensure compliance with federal standards as required by Section 274 of the Atomic Energy Act of 1954. This amendment will incorporate the transportation regulations by reference at section 61-83.1.2.

DETERMINATION OF COSTS AND BENEFITS This regulatory amendment is exempt from the requirements of a Preliminary Fiscal Impact Statement or a Preliminary Assessment Report because the proposed changes are necessary to maintain compliance with federal regulations. The USNRC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

UNCERTAINTIES OF ESTIMATES: No known uncertainties

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH: The adoption of this regulation will ensure an effective regulatory program for radioactive material users under state jurisdiction and protection of the public and workers from unnecessary exposure to ionizing radiation. These changes will provide the updates to the transportation safety standards for radioactive materials.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: The State's authority to implement federal requirements, which are believed to be beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

ATTACHMENT B
TABLE OF REVISIONS TO R.61-83,
TRANSPORTATION OF RADIOACTIVE WASTE INTO AND WITHIN SOUTH CAROLINA
June 8, 2006

Section citation and description of section change:

<u>SECTION</u>	<u>CHANGE</u>
61-83 1.2	Remove reference to 49 CFR Parts 171-179, 49 CFR Parts 386-399 and replace with reference to the Nuclear Regulatory Commission Title 10 CFR Part 71 as revised January 1, 2006, with corrections at 69 FR 6139 and 69 FR 58038. The Final Rule and corrections are reflected in 10 CFR Part 71 as revised January 1, 2006.

ATTACHMENT C
TEXT OF PROPOSED AMENDMENTS TO
R.61-83, TRANSPORTATION OF RADIOACTIVE WASTE MANAGEMENT
INTO OR WITHIN SOUTH CAROLINA
June 8, 2006

Legend:

Deleted text is shown by ~~strikeout~~.

Added text is shown by underlining.

Section 61-83.1.2 is amended to read:

61-83 1.2 All persons subject to the provisions of this regulation shall comply with all applicable provisions of the Nuclear Regulatory Commission Title 10 CFR Part 71 as revised January 1, 2006, 49-CFR Parts 171-179, 49-CFR Parts 386, 399, 10-CFR Part 71, Regulation 61-83 of the 1976 Code of Laws of South Carolina, and any disposal facility radioactive material license requirements regarding the packaging, transportation, disposal, storage or delivery of radioactive materials

ATTACHMENT D
September 8, 2006
STATE REGISTER NOTICE OF PROPOSED REGULATIONS
Document No. _____
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Ann. Sections 13-7-10 *et seq.* (1976 & Supp. 2005); 13-7-40.

R. 61-83 Transportation of Radioactive Waste Into or Within South Carolina

Preamble:

The United States Nuclear Regulatory Commission (USNRC) promulgates amendments to 10 CFR 71 throughout each calendar year. Recent amendments include requirements for the Transportation Safety Standards. These rules were published in the Federal Register on January 26, 2004, at 69 FR 3698. Corrections to the Final Rule were published in the Federal Register on February 10, 2004 at 69 FR 6139 and September 29, 2004 at 69 FR 58038. The Final Rule and corrections are reflected in 10 CFR Part 71 as revised January 1, 2006. The State is required to adopt certain federal amendments within three years of the effective date of changes in USNRC regulations to maintain authorization by the USNRC for the State Radioactive Waste Management Program.

The Department intends to amend R.61-83, Transportation of Radioactive Waste Into or Within South Carolina, to maintain conformity with the federal requirements for Transportation Safety standards as found in 10 CFR 71 and ensure compliance with federal standards as required by Section 274 of the Atomic Energy Act of 1954. This amendment will incorporate the transportation regulations by reference at section 61-83.1.2. This amendment will not be more stringent than the federal equivalent and will not require legislative review, nor is a preliminary assessment report or a fiscal impact statement required.

A Notice of Drafting for the proposed amendments was published in the State Register on March 24, 2006, and no comments were received. See Discussion of Proposed Revision below and Statement of Need and Reasonableness herein.

Discussion of Proposed Revisions:

[The Table of Revisions is submitted as Attachment B, and is omitted here to conserve space in the Board agenda item.]

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invite interested members of the public and regulated community to attend a staff-conducted informational forum to be held on Monday, July 31, 2006, at 10:30 a.m. in Room 1710 of the Stern Building at 8911 Farrow Road, Suite 106. The purpose of the forum is to answer questions and to receive public comments from interested persons on the proposed amendment of R.61-83. Comments received at the informational forum shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing noticed below.

Notice of Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Sections 1-23-110 and 1-23-111:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental control at its regularly-scheduled meeting on September 14, 2006. The public hearing will be held in the Board Room

of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The Board's agenda will be published by the Department 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed regulation by writing to Henry Porter, Assistant Director of the Division of Waste Management, at 2600 Bull Street, Columbia, SC 29201. Written comments must be received no later than July 31, 2006, the close of the public comment period. Comments received by the deadline date shall be considered by staff in formulating the final proposed regulation for public hearing on September 14, 2006, as noticed above. Comments received by the deadline date shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing.

Information or copies of the proposed text for public notice and comment may be obtained at <http://www.scdhec.gov/lwm/html/public.html> or by calling Michael Moore at (803)896-4181.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness complies with S.C. Code Ann. Sections 1-23-115(c)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Proposed amendment of R.61-83, Transportation of Radioactive Waste Into or Within South Carolina

Purpose: The federal equivalent to R.61-83 is amended periodically. The State is required to adopt certain federal amendments within three years of the effective date of changes in United States Nuclear Regulatory Commission (USNRC) regulations to maintain authorization by the USNRC for the State Radioactive Waste Management Program.

Legal Authority: S.C. Code Ann. Sections 13-7-10 *et seq.*; 13-7-40,

Plan for Implementation: Upon final approval by the Board of Health and Environmental Control and publication in the State Register as a final regulation, amended regulations will be provided to the regulated community at cost through the Department's Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: Adoption of the proposed amendments of R.61-83 will enable compliance with recent federal amendments. See purpose above.

The Department intends to amend R.61-83 to maintain conformity with the federal requirements for Transportation Safety Standards as found in 10 CFR 71 and published in the Federal Register at 68 FR 3698 on January 26, 2004. Corrections to the Final Rule were published in the Federal Register on February 10, 2004 at 69 FR 6139 and September 29, 2004 at 69 FR 58038. The Final Rule and corrections are reflected in 10 CFR Part 71 as revised January 1, 2006. Adoption of these regulations will ensure compliance with federal standards as required by Section 274 of the Atomic Energy Act of 1954. This amendment will incorporate the transportation regulations by reference at section 61-83.1.2.

DETERMINATION OF COSTS AND BENEFITS This regulatory amendment is exempt from the requirements of a Preliminary Fiscal Impact Statement or a Preliminary Assessment Report because the proposed changes are necessary to maintain compliance with federal regulations. The USNRC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

UNCERTAINTIES OF ESTIMATES: No known uncertainties

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH: The adoption of this regulation will ensure an effective regulatory program for radioactive material users under state jurisdiction and protection of the public and workers from unnecessary exposure to ionizing radiation. These changes will provide the updates to the transportation safety standards for radioactive materials.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: The State's authority to implement federal requirements, which are believed to be beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

Text of Proposed Amendment for Public Comment:

Section 61-83.1.2 is amended to read:

61-83 1.2 All persons subject to the provisions of this regulation shall comply with all applicable provisions of the Nuclear Regulatory Commission Title 10 CFR Part 71 as revised January 1, 2006, Regulation 61-83 of the 1976 Code of Laws of South Carolina, and any disposal facility radioactive material license requirements regarding the packaging, transportation, disposal, storage or delivery of radioactive materials

ATTACHMENT E
(Notice of Drafting published March 24, 2006)
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Sections 13-7-10 *et seq.*; 13-7-40

R.61-63 Radioactive Materials (Title A) Regulations

R.61-83 Transportation of Radioactive Waste Into or Within South Carolina Regulations

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-63, Radioactive Materials (Title A) and R.61-83, Transportation of Radioactive Waste Into or Within South Carolina, to adopt federal amendments through January 26, 2004. Interested persons may submit comments in writing to Henry J. Porter, Division of Waste Management, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, comments must be received by 5:00 p.m. on Friday, April 25, 2006.

Synopsis:

The Nuclear Regulatory Commission (USNRC) promulgates amendments to 10 CFR 30, 40, 70 and 71 throughout each calendar year. Recent amendments include requirements for Financial Assurance for Material Licensees and Transportation Safety Standards. These rules have been published in the Federal Register between October 3, 2003 and January 26, 2004, at 68 FR 57327 on October 3, 2003 and 69 FR 3698 on January 26, 2004. The Department intends to amend R.61-63, Radioactive Materials (Title A) to maintain conformity with federal requirements for Financial Assurance for Material Licensees as found in 10 CFR 30, 40, and 70 and the Transportation Safety Standards as found in 10 CFR 71 and ensure compliance with federal standards as required by Section 274 of the Atomic Energy Act of 1954. The transportation regulations are incorporated by reference into R.61-63, Radioactive Materials (Title A). In addition, several minor corrections and clarifications may be made to achieve conformity with prior federal regulations. Legislative review of these amendments will not be required.

The Nuclear Regulatory Commission (USNRC) promulgates amendments to 10 CFR 71 throughout each calendar year. Recent amendments include requirements for the Transportation Safety Standards. These rules have been published in the Federal Register on January 26, 2004 at 69 FR 3698 on January 26, 2004. The Department intends to amend R.61-83, Transportation of Radioactive Waste Into or Within South Carolina, to maintain conformity with federal requirements for Transportation Safety Standards as found in 10 CFR 71 and ensure compliance with federal standards as required by Section 274 of the Atomic Energy Act of 1954. The transportation regulations are incorporated by reference into R.61-83, Transportation of Radioactive Waste Into or Within South Carolina. In addition, several minor corrections and clarifications may be made to achieve conformity with prior federal regulations. Legislative review of these amendments will not be required.